S.B.Civil Misc.Appeal No.90/87
Union of India vs. Smt. Shanta & ors.

Date of Order: 28.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. V.K.Mathur for the appellants.

This appeal is against the award dated 31.3.1987 passed by the learned Workmen Compensation Commissioner, Udaipur in Claim Case No.18/85.

Brief facts of the case are that the claimants legal heirs of the employee deceased Kishan Singh submitted claim petition before the learned Workmen Compensation Commissioner stating therein that the deceased Kishan Singh was in employment of the non-claimant appellant. He was appointed as driver and was getting Rs.750/- per month. On 9.2.1985, said Kishan Singh, while returning after his duty hours to his home at village Basani Kalan, he met with an accident caused by Truck No. RJB 2383. In the said accident, said Kishan Singh died. The claimants claimed compensation of Rs.59,280/-.

The non-claimant appellant submitted reply to the claimant petition and admitted that the deceased was in employment of the appellant-non-claimant. Kishan Singh died due to the accident was also admitted but it is stated that Kishan Singh did not die during course of employment.

The issues were framed and the learned Workmen Compensation

Commissioner considered oral as well as documentary evidence, particularly the log-book(Ex.D.1) wherein the duty of the deceased was recorded. The learned Workmen Compensation Commissioner, relied upon the statements of the witnesses and held that the deceased died while returning his home from duty. Therefore, the learned Workmen Compensation Commissioner reached to the conclusion that the non-claimants-respondents are liable to pay compensation amount of Rs.47,294.40 and penalty of Rs.4729.60, in total Rs.52,024/-.

The Union of India preferred appeal along with the Department to challenge the award passed by the learned Workmen Compensation Commissioner dated 31.3.1987. According to the learned counsel for the appellant, admittedly, the deceased was relieved from the duty and he was going to his home and he died because of the accident by the motor vehicle. Therefore, the deceased was not discharging any duty under the employment. It is also submitted that the distance between the village of the deceased and the office was only 3-5 kms. and the accident occurred about three hours after leaving the place of employment by the deceased. Therefore, it cannot be said that the deceased met with the accident while returning his house from the employment. It is submitted that he must have stopped somewhere else and thereafter he must have met with the accident.

I considered the submissions of the learned counsel for the

appellant and perused the facts of the case as well as the record.

Basically the appeal is on the point of facts more, rather on the question of law. The question of law involve in this appeal is that the deceased who was in service and discharging the duties on the unfortunate date, met with the accident, while returning to his home, can claim the compensation from the employer. The deceased was in the employment on the date when he died is not in dispute, rather was undisputed in view of the documentary evidence. The claimants gave their statements that the deceased met with the accident while returning to his house from his place of work. There is no rebuttal evidence to contradict this statement of fact. Therefore, even if the deceased died due to the accident while returning his home from his place of work, he was entitled to the compensation.

In view of the above, I do not find any merit in this appeal and hence the same is hereby is dismissed. The compensation amount of Rs.12,024/- may have been paid to the claimants in pursuance of the interim order passed by this Court dated 9.7.1987.The remaining amount of Rs.40,000/- was ordered to be kept in fixed deposit in pursuance of the order of this Court dated 28.10.1987 passed on the stay petition. The said amount along with all interest be paid to the claimants forthwith.

mlt. (**PRAKASH TATIA),J.**